

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 441 OF 2007.

Kailash Mangesh Chumbale & others. ... Appellants.

Versus.

Mangesh Shankar Chumbale & another. ... Respondents.

Shri J.Shekhar i/by M/s.J.Shekhar & Co. for the Appellants.

Shri P.N.Joshi for the Respondent No.1.

CORAM : ABHAY S.OKA, J.

DATED : 8th June, 2007.

P.C.:

1. The Appellants are the original Plaintiffs. The Appellant No.1 is the son of the Respondent No.1. The Appellant No.2 is the wife of the Appellant No.1 and the Appellants Nos.3 and 4 are the children of the Appellant No.1. In a suit for partition filed by the Appellants, an Application for temporary injunction made by the Appellants has been partly allowed by restraining the 1st Respondent-father from creating any third party interests in respect of 1/3rd share in the property described in clause (c) of paragraph 5 of the plaint.

2. The submission of the learned Advocate appearing for the Appellant is that the injunction should have been granted even in respect of the rest of the suitr properties. He submitted that the prima facie observations made by the learned trial Judge in paragraph 7 of the impugned order are completely

erroneous as section 11 of the Code of Civil Procedure, 1908 will have no application in the facts of the case.

3. I have considered the submissions. A Protection has been granted by the trial Court in respect of part of the suit properties in favour of the Appellants. The 1st Appellant wants injunction respect of the other properties against his own father. The suit for partition is pending. It is obvious that all further transactions in respect of the said properties are subject to final outcome of the suit.

4. Considering the factual aspects of the case, no interference is called for with the discretionary and equitable order passed by the trial Court. The Appeal is accordingly dismissed.

5. It is made clear that the observations made in the impugned order are only tentative observations and the suit will be finally decided without being influenced by the said observations as well as confirmation of the impugned order by this Court.

Judge.